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Attorneys for Defendants
SIRVA, INC., JOE JENIO, KEN WHELAN,
SCOTT BLACK, JUAN CORTES and RAMON PADILLA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GABRIELLA LEMA,

Plaintiff,

vs.

SIRVA/NAL WORLDWIDE LOGISTICS, SIRVA,
INC., JUAN CORTES, JOE JENIO, SCOTT BLACK,
KEN WHELAN, MARILYN BEARDSLEY, and
RAMON PADILLA

Defendants.

CASE NO.: C07 03631 JF

**ANSWER OF DEFENDANTS SIRVA,
INC., JOE JENIO, KEN WHELAN,
SCOTT BLACK, JUAN CORTES AND
RAMON PADILLA TO PLAINTIFF'S
AMENDED COMPLAINT**

Defendants SIRVA, Inc. (erroneously sued herein as "SIRVA/NAL WORLDWIDE LOGISTICS" and erroneously identified as Plaintiff's employer), Joe Jenio, Ken Whelan, Scott Black, Juan Cortes and Ramon Padilla (collectively referred to herein as "Defendants"), for themselves alone and for no other defendant, submit their Answer to Amended Complaint for Damages filed on December 25, 2007 ("Amended Complaint") by plaintiff Gabriella Lema ("Plaintiff") as follows:

RESPONSES RE PROCEDURAL BACKGROUND

1. Answering Paragraph 1 of the Amended Complaint, Defendants admit that Plaintiff received a Notice to Complainant of Right-To-Sue from California's Department of Fair Employment and Housing and a Dismissal and Notice of Rights from the Equal Employment Opportunity

Commission, admit that Plaintiff filed a Complaint in Alameda County Superior Court on or about April 23, 2007 against the referenced defendants, admit that Plaintiff attempted to file an amendment to her Complaint on or about May 30, 2007 (which was rejected), admit that certain defendants removed Plaintiff's state court action to District Court on July 13, 2007, admit that certain defendants filed their Answer to Plaintiff's state court action on July 17, 2007, admit that Plaintiff filed an Opposition and Rebuttal to Defendants' Notice of Removal of Civil Action in or about August 2007 and admit that Plaintiff's counsel entered an appearance on or about September 4, 2007. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

RESPONSES RE PARTIES

2. Answering Paragraph 2 of the Amended Complaint, Defendants deny that Plaintiff was an employee of an entity purportedly known as "Sirva/Nal Worldwide Logistics," deny that she was an employee of SIRVA, Inc., deny that she was unlawfully discriminated against or wrongfully discharged, deny that they participated in any "wrongdoing" and deny that Plaintiff was harassed, injured or damaged by their conduct. Defendants admit that they were either supervisors or co-workers of Plaintiff at various times. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

RESPONSES RE FACTUAL BACKGROUND

3. Answering Paragraph 3 of the Amended Complaint, Defendants deny that Plaintiff was an employee of an entity purportedly known as "Sirva/Nal Worldwide Logistics," deny that she was an employee of SIRVA, Inc. and deny that she began her employment with her employer at the San Jose Logistics Center in or around September 2000. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

4. Answering Paragraph 4 of the Amended Complaint, Defendants deny that Plaintiff was an employee in 2000. Defendants admit that Plaintiff performed certain of her job duties in 2001, 2002 and 2003 in a satisfactory manner. Defendants admit that Plaintiff's work environment was congenial

as that term is commonly used.

5. Answering Paragraph 5 of the Amended Complaint, Defendants are uncertain as to what Plaintiff is referring to as the purported “ownership and management change” and, on that basis, denies this allegation. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

6. Answering Paragraph 6 of the Amended Complaint, Defendants are uncertain as to what Plaintiff is referring to as the purported “ownership and management transition” and, on that basis, denies this allegation. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

7. Answering Paragraph 7 of the Amended Complaint, Defendants deny that Joe Jenio made any racial, negative or demeaning statements to Plaintiff. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

8. Answering Paragraph 8 of the Amended Complaint, Defendants deny that Plaintiff was given more work than her co-workers. Defendants admit that co-workers, in certain circumstances, were to be cross-trained. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

9. Answering Paragraph 9 of the Amended Complaint, Defendants deny that Joe Jenio engaged in any sexually harassing conduct toward Plaintiff. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

10. Answering Paragraph 10 of the Amended Complaint, Defendants deny that Jose Cortes engaged in any sexually harassing conduct toward Plaintiff. Defendants deny, generally and specifically, each remaining allegation in this Paragraph.

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11. Answering Paragraph 11 of the Amended Complaint, Defendants lack sufficient information to enable them to admit or deny the allegations in this Paragraph and, on that basis, generally and specifically, deny each allegation.

12. Answering Paragraph 12 of the Amended Complaint, Defendants lack sufficient information to enable them to admit or deny the allegations in this Paragraph and, on that basis, generally and specifically, deny each allegation.

13. Answering Paragraph 13 of the Amended Complaint, Defendants lack sufficient information to enable them to admit or deny the allegations in this Paragraph and, on that basis, generally and specifically, deny each allegation.

14. Answering Paragraph 14 of the Amended Complaint, Defendants deny, generally and specifically, each allegation in this Paragraph.

15. Answering Paragraph 15 of the Amended Complaint, Defendants deny, generally and specifically, each allegation in this Paragraph.

16. Answering Paragraph 16 of the Amended Complaint, Defendants deny that they discriminated or retaliated against Plaintiff. Defendants deny that they singled-out Plaintiff in an inappropriate manner. Defendants lack sufficient information to enable them to admit or deny the remaining allegations in this Paragraph and, on that basis, generally and specifically, deny each remaining allegation.

17. Answering Paragraph 17 of the Amended Complaint, Defendants admit that Juan Cortes instructed Plaintiff to assist in handling another co-worker's account. Defendants deny that Plaintiff was asked to perform more work or work harder than other co-workers. Defendants lack sufficient information to enable them to admit or deny the remaining allegations in this Paragraph and, on that

1 basis, generally and specifically, deny each remaining allegation.

2
3 18. Answering Paragraph 18 of the Amended Complaint, Defendants admit that Ramon
4 Padilla took photographs of each co-worker for the purpose of preparing company badges and that
5 Plaintiff, initially, refused to allow her photograph to be taken. Defendants deny that Ramon Padilla
6 was “staring down at [Plaintiff’s] zipper area.” Defendants deny further that they acted improperly in
7 any way in connection with attempting to obtain a photograph of Plaintiff for use on her company
8 badge. Defendants lack sufficient information to enable them to admit or deny the remaining
9 allegations in this Paragraph and, on that basis, generally and specifically, deny each remaining
10 allegation.

11
12 19. Answering Paragraph 19 of the Amended Complaint, Defendants lack sufficient
13 information as to what another co-worker may have told her and, on that basis, generally and
14 specifically, deny each allegation in this Paragraph.

15
16 20. Answering Paragraph 20 of the Amended Complaint, Defendants lack sufficient
17 information as to what another co-worker may have told her and, on that basis, generally and
18 specifically, deny each allegation in this Paragraph.

19
20 21. Answering Paragraph 21 of the Amended Complaint, Defendants deny that Juan Cortes
21 ignored any request by Plaintiff for assistance. Defendants lack sufficient information to enable them to
22 admit or deny the remaining allegations in this Paragraph and, on that basis, generally and specifically,
23 deny each remaining allegation.

24
25 22. Answering Paragraph 22 of the Amended Complaint, Defendants lack sufficient
26 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
27 generally and specifically, deny each allegation.

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1 23. Answering Paragraph 23 of the Amended Complaint, Defendants deny that Juan Cortes
2 acted inappropriately toward Plaintiff. Defendants deny further that Juan Cortes “hurled a stack of
3 papers toward” Plaintiff. Defendants lack sufficient information to enable them to admit or deny the
4 remaining allegations in this Paragraph and, on that basis, generally and specifically, deny each
5 remaining allegation.

6
7 24. Answering Paragraph 24 of the Amended Complaint, Defendants lack sufficient
8 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
9 generally and specifically, deny each allegation.

10
11 25. Answering Paragraph 25 of the Amended Complaint, Defendants admit that Juan Cortes
12 contacted Plaintiff for the purpose of conducting her annual performance evaluation. Defendants lack
13 sufficient information to enable them to admit or deny the remaining allegations in this Paragraph and,
14 on that basis, generally and specifically, deny each remaining allegation.

15
16 26. Answering Paragraph 26 of the Amended Complaint, Defendants lack sufficient
17 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
18 generally and specifically, deny each allegation.

19
20 27. Answering Paragraph 27 of the Amended Complaint, Defendants deny that Marilyn
21 Beardsley made any representation that she knew was false. Defendants lack sufficient information to
22 enable them to admit or deny the remaining allegations in this Paragraph and, on that basis, generally
23 and specifically, deny each remaining allegation.

24
25 28. Answering Paragraph 28 of the Amended Complaint, Defendants deny, generally and
26 specifically, each allegation set forth in this Paragraph.

1 29. Answering Paragraph 29 of the Amended Complaint, Defendants admit that on or about
2 July 15, 2005, the company that purchased the assets of the San Jose Logistics Center sent to Plaintiff
3 and others a letter outlining the transaction. Defendants lack sufficient information to enable them to
4 admit or deny the remaining allegations in this Paragraph and, on that basis, generally and specifically,
5 deny each remaining allegation.

6
7 30. Answering Paragraph 30 of the Amended Complaint, Defendants lack sufficient
8 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
9 generally and specifically, deny each allegation.

10
11 31. Answering Paragraph 31 of the Amended Complaint, Defendants deny that Juan Cortes
12 instructed a co-worker to discontinue visits to Plaintiff's residence "because she is the enemy because
13 she filed a claim against us."

14
15 32. Answering Paragraph 32 of the Amended Complaint, Defendants deny that Scott Black
16 bragged "about how the company 'finally got rid of [Plaintiff].'"

17
18 33. Answering Paragraph 33 of the Amended Complaint, Defendants admit that Plaintiff
19 contacted Mary Menconi and raised the issues of alleged harassment and retaliation. Defendants deny
20 that they harassed or retaliated against Plaintiff. Defendants lack sufficient information to enable them
21 to admit or deny the remaining allegations in this Paragraph and, on that basis, generally and
22 specifically, deny each remaining allegation.

23
24 34. Answering Paragraph 34 of the Amended Complaint, Defendants admit that Plaintiff
25 received a letter which, among other things, reminded her that the logistics center assets were sold to
26 another company and suggested that she explore other opportunities internally or with the company that
27 purchased the assets of the logistic center. Defendants lack sufficient information to enable them to
28 admit or deny the remaining allegations in this Paragraph and, on that basis, generally and specifically,

1 deny each remaining allegation.

2
3 35. Answering Paragraph 35 of the Amended Complaint, Defendants lack sufficient
4 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
5 generally and specifically, deny each allegation.

6
7 36. Answering Paragraph 36 of the Amended Complaint, Defendants lack sufficient
8 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
9 generally and specifically, deny each allegation.

10
11 37. Answering Paragraph 37 of the Amended Complaint, Defendants lack sufficient
12 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
13 generally and specifically, deny each allegation.

14
15 38. Answering Paragraph 38 of the Amended Complaint, Defendants lack sufficient
16 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
17 generally and specifically, deny each allegation.

18
19 39. Answering Paragraph 39 of the Amended Complaint, Defendants deny, generally and
20 specifically, each allegation set forth in this Paragraph.

21
22 40. Answering Paragraph 40 of the Amended Complaint, Defendants deny engaging any
23 wrongful or unlawful conduct toward Plaintiff. Defendants deny, generally and specifically, each
24 remaining allegation set forth in this Paragraph.

25
26 **RESPONSES RE FIRST CLAIM FOR RELIEF**

27 41. Answering Paragraph 41 of the Amended Complaint, Defendants incorporate by
28 reference their admissions and denials to Paragraphs 1 through 40 of the Amended Complaint as

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1 though fully set forth herein.

2
3 42. Answering Paragraph 42 of the Amended Complaint, Defendants deny, generally and
4 specifically, each allegation set forth in this Paragraph.

5
6 43. Answering Paragraph 43 of the Amended Complaint, Defendants are uncertain as to
7 what Plaintiff is referring to as “business and/or professional relationship” and, on that basis, denies
8 this allegation. Defendants deny, generally and specifically, each remaining allegation in this
9 Paragraph.

10
11 44. Answering Paragraph 44 of the Amended Complaint, Defendants deny, generally and
12 specifically, each allegation set forth in this Paragraph.

13
14 45. Answering Paragraph 45 of the Amended Complaint, Defendants deny, generally and
15 specifically, each allegation set forth in this Paragraph.

16
17 **RESPONSES RE SECOND CLAIM FOR RELIEF**

18 46. Answering Paragraph 46 of the Amended Complaint, Defendants incorporate by
19 reference their admissions and denials to Paragraphs 1 through 45 of the Amended Complaint as
20 though fully set forth herein.

21
22 47. Answering Paragraph 47 of the Amended Complaint, Defendants admit that California
23 Government Code Section 12940, et seq. was in effect during the time that Plaintiff worked at the San
24 Jose Logistics Center. Defendants admit that the certain portions of this statute prohibit unlawful sexual
25 harassment, unlawful gender discrimination, unlawful retaliation and other specifically identified forms
26 of unlawful discrimination. Defendants deny, generally and specifically, each remaining allegation set
27 forth in this Paragraph.

1 48. Answering Paragraph 48 of the Amended Complaint, Defendants deny, generally and
2 specifically, each allegation set forth in this Paragraph.

3
4 49. Answering Paragraph 49 of the Amended Complaint, Defendants lack sufficient
5 information to enable them to admit or deny the allegations in this Paragraph and, on that basis,
6 generally and specifically, deny each allegation.

7
8 **RESPONSES RE THIRD CLAIM FOR RELIEF**

9 50. Answering Paragraph 50 of the Amended Complaint, Defendants incorporate by
10 reference their admissions and denials to Paragraphs 1 through 49 of the Amended Complaint as
11 though fully set forth herein.

12
13 51. Answering Paragraph 51 of the Amended Complaint, Defendants deny, generally and
14 specifically, each allegation set forth in this Paragraph.

15
16 52. Answering Paragraph 52 of the Amended Complaint, Defendants deny, generally and
17 specifically, each allegation set forth in this Paragraph.

18
19 53. Answering Paragraph 53 of the Amended Complaint, Defendants deny, generally and
20 specifically, each allegation set forth in this Paragraph.

21
22 **RESPONSES RE FOURTH CLAIM FOR RELIEF**

23 54. Answering Paragraph 54 of the Amended Complaint, Defendants incorporate by
24 reference their admissions and denials to Paragraphs 1 through 53 of the Amended Complaint as
25 though fully set forth herein.

26
27 55. Answering Paragraph 55 of the Amended Complaint, Defendants admit that Plaintiff's
28 employment was terminated. Defendants deny, generally and specifically, each remaining allegation

1 set forth in this Paragraph.

2
3 56. Answering Paragraph 56 of the Amended Complaint, Defendants deny, generally and
4 specifically, each allegation set forth in this Paragraph.

5
6 **RESPONSES RE FIFTH CLAIM FOR RELIEF**

7 57. Answering Paragraph 57 of the Amended Complaint, Defendants incorporate by
8 reference their admissions and denials to Paragraphs 1 through 56 of the Amended Complaint as
9 though fully set forth herein.

10
11 58. Answering Paragraph 58 of the Amended Complaint, Defendants deny, generally and
12 specifically, each allegation set forth in this Paragraph.

13
14 59. Answering Paragraph 59 of the Amended Complaint, Defendants deny, generally and
15 specifically, each allegation set forth in this Paragraph.

16
17 60. Answering Paragraph 60 of the Amended Complaint, Defendants deny, generally and
18 specifically, each allegation set forth in this Paragraph.

19
20 61. Answering Paragraph 61 of the Amended Complaint, Defendants deny, generally and
21 specifically, each allegation set forth in this Paragraph.

22
23 62. Answering Paragraph 62 of the Amended Complaint, Defendants deny, generally and
24 specifically, each allegation set forth in this Paragraph.

25
26 **RESPONSES RE SIXTH CLAIM FOR RELIEF**

27 63. Answering Paragraph 63 of the Amended Complaint, Defendants incorporate by
28 reference their admissions and denials to Paragraphs 1 through 62 of the Amended Complaint as

1 though fully set forth herein.

2
3 64. Answering Paragraph 64 of the Amended Complaint, Defendants deny, generally and
4 specifically, each allegation set forth in this Paragraph.

5
6 65. Answering Paragraph 65 of the Amended Complaint, Defendants deny, generally and
7 specifically, each allegation set forth in this Paragraph.

8
9 66. Answering Paragraph 66 of the Amended Complaint, Defendants deny, generally and
10 specifically, each allegation set forth in this Paragraph.

11
12 **RESPONSES RE SEVENTH CLAIM FOR RELIEF**

13 67. Answering Paragraph 67 of the Amended Complaint, Defendants incorporate by
14 reference their admissions and denials to Paragraphs 1 through 66 of the Amended Complaint as
15 though fully set forth herein.

16
17 68. Answering Paragraph 68 of the Amended Complaint, Defendants deny, generally and
18 specifically, each allegation set forth in this Paragraph.

19
20 69. Answering Paragraph 69 of the Amended Complaint, Defendants deny, generally and
21 specifically, each allegation set forth in this Paragraph.

22
23 70. Answering Paragraph 70 of the Amended Complaint, Defendants deny, generally and
24 specifically, each allegation set forth in this Paragraph.

25
26 71. Answering Paragraph 71 of the Amended Complaint, Defendants deny, generally and
27 specifically, each allegation set forth in this Paragraph.

1 72. Answering Paragraph 72 of the Amended Complaint, Defendants deny, generally and
2 specifically, each allegation set forth in this Paragraph.

3
4 **RESPONSES RE EIGHTH CLAIM FOR RELIEF**

5 73. Answering Paragraph 73 of the Amended Complaint, Defendants incorporate by
6 reference their admissions and denials to Paragraphs 1 through 72 of the Amended Complaint as
7 though fully set forth herein.

8
9 74. Answering Paragraph 74 of the Amended Complaint, Defendants deny, generally and
10 specifically, each allegation set forth in this Paragraph.

11
12 75. Answering Paragraph 75 of the Amended Complaint, Defendants deny, generally and
13 specifically, each allegation set forth in this Paragraph.

14
15 **RESPONSES RE NINTH CLAIM FOR RELIEF**

16 76. Answering Paragraph 76 of the Amended Complaint, Defendants incorporate by
17 reference their admissions and denials to Paragraphs 1 through 75 of the Amended Complaint as
18 though fully set forth herein.

19
20 77. Answering Paragraph 77 of the Amended Complaint, Defendants deny, generally and
21 specifically, each allegation set forth in this Paragraph.

22
23 78. Answering Paragraph 78 of the Amended Complaint, Defendants deny, generally and
24 specifically, each allegation set forth in this Paragraph.

25
26 79. Answering Paragraph 79 of the Amended Complaint, Defendants deny, generally and
27 specifically, each allegation set forth in this Paragraph.
28

RESPONSES RE TENTH CLAIM FOR RELIEF

80. Answering Paragraph 80 of the Amended Complaint, Defendants incorporate by reference their admissions and denials to Paragraphs 1 through 79 of the Amended Complaint as though fully set forth herein.

81. Answering Paragraph 81 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

82. Answering Paragraph 82 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

RESPONSES RE ELEVENTH CLAIM FOR RELIEF

83. Answering Paragraph 83 of the Amended Complaint, Defendants incorporate by reference their admissions and denials to Paragraphs 1 through 82 of the Amended Complaint as though fully set forth herein.

84. Answering Paragraph 84 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

85. Answering Paragraph 85 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

86. Answering Paragraph 86 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

RESPONSES RE TWELFTH CLAIM FOR RELIEF

87. Answering Paragraph 87 of the Amended Complaint, Defendants incorporate by reference their admissions and denials to Paragraphs 1 through 86 of the Amended Complaint as

1 though fully set forth herein.

2
3 88. Answering Paragraph 88 of the Amended Complaint, Defendants admit that Plaintiff
4 was discharged. Defendants lack sufficient information to enable them to admit or deny whether
5 Plaintiff's condition constitutes a "disability" as that term is defined in the Americans with Disabilities
6 Act and, on that basis, generally and specifically, deny each remaining allegation.

7
8 89. Answering Paragraph 89 of the Amended Complaint, Defendants lack sufficient
9 information to enable them to admit or deny whether Plaintiff's condition constitutes a "disability" as
10 that term is defined in the Americans with Disabilities Act and, on that basis, generally and specifically,
11 deny each allegation.

12
13 90. Answering Paragraph 90 of the Amended Complaint, Defendants lack sufficient
14 information to enable them to admit or deny whether Plaintiff's condition constitutes a "disability" as
15 that term is defined in the Americans with Disabilities Act and, on that basis, generally and specifically,
16 deny that allegation. Defendants deny that Plaintiff was qualified to do her job with reasonable
17 accommodation. Defendants deny, generally and specifically, each remaining allegation set forth in
18 this Paragraph.

19
20 91. Answering Paragraph 91 of the Amended Complaint, Defendants deny, generally and
21 specifically, each allegation set forth in this Paragraph.

22
23 92. Answering Paragraph 92 of the Amended Complaint, Defendants deny, generally and
24 specifically, each allegation set forth in this Paragraph.

25
26 **RESPONSES RE THIRTEENTH CLAIM FOR RELIEF**

27 93. Answering Paragraph 93 of the Amended Complaint, Defendants incorporate by
28 reference their admissions and denials to Paragraphs 1 through 92 of the Amended Complaint as

1 though fully set forth herein.

2
3 94. Answering Paragraph 94 of the Amended Complaint, Defendants deny, generally and
4 specifically, each allegation set forth in this Paragraph.

5
6 95. Answering Paragraph 95 of the Amended Complaint, Defendants deny, generally and
7 specifically, each allegation set forth in this Paragraph.

8
9 96. Answering Paragraph 96 of the Amended Complaint, Defendants deny, generally and
10 specifically, each allegation set forth in this Paragraph.

11
12 **RESPONSES RE FOURTEENTH CLAIM FOR RELIEF**

13 97. Answering Paragraph 97 of the Amended Complaint, Defendants incorporate by
14 reference their admissions and denials to Paragraphs 1 through 96 of the Amended Complaint as
15 though fully set forth herein.

16
17 98. Answering Paragraph 98 of the Amended Complaint, Defendants deny, generally and
18 specifically, each allegation set forth in this Paragraph.

19
20 99. Answering Paragraph 99 of the Amended Complaint, Defendants deny, generally and
21 specifically, each allegation set forth in this Paragraph.

22
23 **RESPONSES RE FIFTEENTH CLAIM FOR RELIEF**

24 100. Answering Paragraph 100 of the Amended Complaint, Defendants incorporate by
25 reference their admissions and denials to Paragraphs 1 through 99 of the Amended Complaint as
26 though fully set forth herein.

27
28 101. Answering Paragraph 101 of the Amended Complaint, Defendants deny, generally and

specifically, each allegation set forth in this Paragraph.

102. Answering Paragraph 102 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

RESPONSES RE SIXTEENTH CLAIM FOR RELIEF

103. Answering Paragraph 103 of the Amended Complaint, Defendants incorporate by reference their admissions and denials to Paragraphs 1 through 102 of the Amended Complaint as though fully set forth herein.

104. Answering Paragraph 104 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

105. Answering Paragraph 105 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

RESPONSES RE SIXTEENTH CLAIM FOR RELIEF

106. Answering Paragraph 106 of the Amended Complaint, Defendants deny, generally and specifically, each allegation set forth in this Paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. Plaintiff's Amended Complaint, and each claim contained therein, fails to state facts sufficient to constitute a claim upon which relief may be granted against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Statutes of Limitation)

2. The Amended Complaint is barred, in whole or in part, by the applicable statutes of limitation including, but not limited to, California Code of Civil Procedure Sections 335.1, 337, 338, 340, California Government Code Sections 12960 and 12965 and 42 U.S.C. Sections 2000e-5(e), 2000e-5(f) and 12117.

THIRD AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

3. The Amended Complaint is barred, in whole or in part, because Plaintiff has failed to exhaust her administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

(Good Faith Belief)

4. The Amended Complaint is barred, in whole or in part, by the fact that any decisions made by Defendants with respect to Plaintiff, if any, were reasonably based on the facts as Defendants understood them.

FIFTH AFFIRMATIVE DEFENSE

(Good Cause)

5. The Amended Complaint is barred, in whole or in part, because Defendants' decisions with respect to Plaintiff, if any, were based on legitimate, non-discriminatory and non-retaliatory business reasons that were neither arbitrary, capricious, nor unlawful.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

6. Plaintiff has engaged in conduct or activities sufficient to constitute a waiver of any claims or causes of action which she may otherwise have had against Defendants.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

7. On information and belief, each claim is barred (or limited) by Plaintiff's failure to mitigate her alleged damages.

EIGHTH AFFIRMATIVE DEFENSE

(Workers' Compensation Act Exclusivity)

8. The Amended Complaint is barred, in whole or in part, by the exclusive jurisdiction and remedy provisions of the California Workers' Compensation Act, including California Labor Code Sections 3200 et seq. and 3600 et seq.

NINTH AFFIRMATIVE DEFENSE

(Laches)

9. The Amended Complaint is barred, in whole or in part, by the laches doctrine.

TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

10. The Amended Complaint is barred, in whole or in part, by the unclean hands doctrine.

ELEVENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

11. Plaintiff's claims are barred, in whole or in part, by the after-acquired evidence doctrine.

TWELFTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

12. Plaintiff's claims are barred or limited by the doctrine of avoidable consequences.

THIRTEENTH AFFIRMATIVE DEFENSE**(Ellerth/Faragher)**

13. Plaintiff's claims are barred or limited because: (1) Defendants exercised reasonable care to prevent and correct promptly any allegedly harassing behavior; and (2) Plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities provided by the employer, or to avoid harm otherwise. See Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 764-65, 118 S.Ct. 2257, 2270 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 806, 118 S.Ct. 2275, 2292-93 (1998).

FOURTEENTH AFFIRMATIVE DEFENSE**(Punitive Damages Not Recoverable)**

14. The Amended Complaint, to the extent it seeks exemplary, double, or punitive damages, violates Defendants' right to procedural due process under the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the Constitution of the State of California and to substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution and, therefore, fails to state a claim upon which either exemplary, double, or punitive damages may be awarded.

FIFTEENTH AFFIRMATIVE DEFENSE**(Punitive Damages Unrecoverable– Excessive Fines)**

15. The Amended Complaint, to the extent it seeks exemplary, double, or punitive damages, violates Defendants' right to protection from "excessive fines" as provided in Article I, Section 17 of the Constitution of the State of California and, therefore, fails to state a claim supporting the exemplary, double, or punitive damages claimed.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Oppression, Fraud, or Malice)

16. Plaintiff is not entitled to recover punitive damages because she has failed to allege facts sufficient to state a claim for punitive damages or to show that Defendants, or any of their managing agents, are guilty of oppression, fraud, or malice. Cal. Civ. Code § 3294.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Release/Waiver)

17. Plaintiff's claims are barred, in whole or in part, to the extent they are based on alleged acts or conduct already released or waived by her.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

18. Plaintiff is estopped from pursuing her Amended Complaint, in whole or in part.

NINETEENTH AFFIRMATIVE DEFENSE

(Privileged)

19. Defendants' conduct or statements were qualifiedly or absolutely privileged and, therefore, not actionable.

TWENTIETH AFFIRMATIVE DEFENSE

(SIRVA, Inc. Not Plaintiff's Employer)

20. Defendant SIRVA, Inc. was not Plaintiff's employer.

DATED: January 8, 2008

BARRITT SMITH LLP

By: /s/ Douglas A. Barritt
Douglas A. Barritt
Attorney for Defendants
SIRVA, INC., JOE JENIO, KEN WHELAN,
SCOTT BLACK, JUAN CORTES and RAMON
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